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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 68

THE UNITED STATES OF AMERICA, APPELLANT

v.

CHARLES A. GASKIN

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the district court (R. 5) is reported at 50 F. Supp. 607.

JURISDICTION

The jurisdiction of this Court on direct appeal is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246, commonly known as the Criminal Appeals Act, as amended May 9, 1942, c. 295, 56 Stat. 271 (18 U. S. C., Supp. II, 682), and by Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (28 U. S. C. 345). The order of the district court sustaining the demurrer to the indict-

ment was entered on April 5, 1943 (R. 4–5). The appeal to this Court was applied for (R. 5–6) and allowed (R. 7) on May 4, 1943. This Court noted probable jurisdiction on June 14, 1943, and transferred the case to the summary docket (R. 9).

QUESTION PRESENTED

Whether an allegation of actual labor following arrest is necessary to charge the crime of arrest under Section 269 of the Criminal Code.

STATUTE INVOLVED

Section 269 of the Criminal Code (18 U. S. C. 444) provides:

> Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

STATEMENT

This is a direct appeal from a judgment of the United States District Court for the Northern District of Florida which sustained a demurrer to an indictment charging a violation of Section 269 of the Criminal Code, *supra*.

The indictment (R. 2) alleged that on August 5, 1940, the defendant, Charles A. Gaskin, "did unlawfully, wilfully, and feloniously, arrest one James Johnson, to a condition of peonage," i. e., "the said Charles A. Gaskin, upon a claim of indebtedness alleged by him to be due him, the said Charles A.

Gaskin, from the said James Johnson, and with the purpose and intent of causing the said James Johnson, against his will, to perform labor and work in satisfaction of said claimed debt, did then and there, forcibly and against the will, of him the said James Johnson, arrest and detain the said James Johnson, and transport him from a place at and near Panama City, Florida, to Wewahitchka, Florida, * * *."

The district court, in sustaining the demurrer, construed the statute as follows (R. 5):

> It is the view of the Court that Section 444, Title 18, United States Code Annotated, does not visit a penalty for an arrest to a condition of peonage where the arrest is upon a claim of indebtedness for the purpose and intent of causing such person to perform labor and work in satisfaction of said debt forcibly and against the will of such person as alleged and set forth in the indictment returned in this case. There is no allegation in the indictment in this case that the alleged peon rendered any actual labor or service for the master. The statute contemplates actual servitude, and upon charge of an arrest to a condition of peonage, an indictment thereunder must carry an allegation with reference to servitude following the arrest. The failure of the indictment in this case to carry such allegation renders it vulnerable under the statute.

SPECIFICATION OF ERRORS TO BE URGED

1. The district court erred in holding that an allegation of actual labor following arrest is necessary to

charge the crime of arrest under Section 269 of the Criminal Code.

2. The district court erred in sustaining the demurrer to the indictment.

SUMMARY OF ARGUMENT

I. Section 269 of the Criminal Code is derived from the Peonage Abolition Act of March 2, 1867, which was enacted to implement the broad guarantees of personal freedom contained in the Thirteenth Amendment. That statute, as is manifest from its face (*infra*, pp. 7–8), was designed to destroy peonage "root and branch; annihilating, not merely the 'system', but also the status—'the condition'—together with all the inevitable incidents to which it led or permitted." *Peonage Cases*, 123 Fed. 671, 679 (D. C. M. D. Ala.). The penal provisions should, of course, despite the rule of strict construction of criminal statutes, be construed so as to accomplish these purposes, particularly since the statute is one *in favorem libertatis* and it is clear that Congress intended to embrace within the ambit of a single enactment all misconduct relative to peonage and its resulting evils.

II. The penal provisions, indubitably, render punishable three distinct offenses, two of which appear to comprehend actual service or labor, "holding" in a condition of peonage, and "returning" to a condition of peonage. The third, "arrest," giving that term its ordinary meaning, is complete when the act of seizure is made and hence cannot include the additional act of compelling the victim to labor following the arrest,

unless there is some qualifying language in the statute requiring that result. Textually, there is no language which properly supports the injection of that element into the offense. It is evident from the language employed, read normally, that Congress meant to penalize anyone who arrests another "for the purpose of placing him in a condition of peonage."

The district court's construction, moreover, impinges on the statutory scheme of three distinct offenses by making the arrest provision serve merely as an "aider and abettor" provision to those dealing with "holding" and "returning." There is nothing in the statute which indicates that Congress intended to make guilt for the crime of arrest depend upon the commission by the arrester or someone else of either of the other two offenses which the statute denounces. Indeed, except occasionally, the arrester, having performed his allotted function, would normally have but little interest in whether the victim was ever actually held in peonage or returned to that condition.

III. The legislative history of the statute supports the conclusion that Congress was interested in punishing as a distinct class those whose only function was to arrest intended victims. Additionally, the view that the crime is complete, when with the intent to place the arrestee in peonage, the arrest is made, is supported by dictum in this Court's opinion in *Clyatt* v. *United States*, 197 U. S. 207, 219.

IV. The effect of the district court's interpretation is to absolve from punishment under the statute everyone who "arrests," "aids" in an arrest, or "causes" an

arrest if, through some extraneous circumstance, peonage does not actually follow the arrest even though fully intended. The practical efficacy of a statute designed, as is the Peonage Abolition Act, to implement the broad guarantees of personal freedom embodied in the Thirteenth Amendment by eradicating, root and branch, peonage and all its accompanying evils, should not be so impaired absent anything in the legislation which requires such a construction.

ARGUMENT

Actual Labor Succeeding Arrest Is Not Required to Complete the Crime of Arrest Denounced by Section 269 of the Criminal Code. It Is Sufficient if the Arrest Is Made for the Purpose of Placing the Victim in a Condition of Peonage or of Returning Him to That Condition

The district court held that the crime of arrest penalized by Section 269 of the Criminal Code is not complete unless the victim of the arrest renders actual service or labor following the arrest (R. 5). We believe the statute makes an arrest a crime if it is accompanied with the intent and purpose that the victim be placed in a condition of peonage or returned to that condition;[1] that labor or service need not be the sequel of the arrest and therefore need not be charged or proved.

A. *The statutory design.*—The Thirteenth Amendment, abolishing slavery and involuntary servitude ex-

[1] The term "arrest," as used in the statute, has been held to include a rearrest after escape from peonage as well as an initial seizure. *Davis* v. *United States*, 12 F. (2d) 253, 256 (C. C. A. 5), certiorari denied, 271 U. S. 688.

cept as a punishment for crime, became effective December 18, 1865. The second section of the Amendment authorized Congress to enforce the article by appropriate legislation. "Under the Thirteenth Amendment," in contrast with the Fourteenth, directed solely against state action, "the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not." *Civil Rights Cases,* 109 U. S. 3, 23. Among the various statutes containing penal sanctions which, within a relatively short period, were enacted to implement the Amendment (*United States* v. *M'Clellan,* 127 Fed. 971, 977–978 (D. C. S. D. Ga.)), is that in which Section 269 of the Criminal Code had its genesis, the Act of March 2, 1867, c. 187, 14 Stat. 546. This Act, entitled "An Act to abolish and forever prohibit the System of Peonage in the Territory of New Mexico and other Parts of the United States", in its first section provides:

> That the holding of any person to service or labor under the system known as peonage is hereby declared to be unlawful, and the same is hereby abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the Territory of New Mexico, or of any other Territory or State of the United States, which have heretofore established, maintained, or en-

> forced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, be, and the same are hereby, declared null and void; and any person or persons who shall hold, arrest, or return, or cause to be held, arrested, or returned, or in any manner aid in the arrest or return of any person or persons to a condition of peonage, shall, upon conviction, be punished by fine not less than one thousand nor more than five thousand dollars, or by imprisonment not less than one nor more than five years, or both, at the discretion of the court.[2]

While this legislation was motivated primarily by the desire to abolish the system of peonage which then existed in the Territory of New Mexico, whereby, through force of law, an indebted servant was held

[2] The second section of the statute provides:

"That it shall be the duty of all persons in the military or civil service in the Territory of New Mexico to aid in the enforcement of the foregoing section of this act; and any person or persons who shall obstruct or attempt to obstruct, or in any way interfere with, or prevent the enforcement of this act, shall be liable to the pains and penalties hereby provided; and any officer or other person in the military service of the United States who shall so offend, directly or indirectly, shall, on conviction before a court-martial, be dishonorably dismissed the service of the United States, and shall thereafter be ineligible to reappointment to any office of trust, honor, or profit under the government."

In subsequent statutory compilations the Act, in major part, was divided into various sections (see 8 U. S. C. 56, and 18 U. S. C. 444, 445) and the minimum fine and imprisonment eliminated (see Section 269, Criminal Code, *supra*, p. 2).

bound to his master's service,[3] Congress in passing the legislation actually did much more. In no uncertain terms it not only abolished the system of peonage then obtaining in New Mexico, but made the prohibition applicable to any other territory or state; and the prohibition was intended to be forever. It nullified not only as to New Mexico but as to any other territory or state "all acts, laws, resolutions, orders, regulations, or usages * * * which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise". And not content with the demolition of any legal or quasi-legal structure which might be utilized to support peonage, Congress went further and fortified its mandate that peonage[4] must be abolished by making the statute in

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[3] See Congressional Globe, 39th Cong., 2d sess. (1866–1867), Vol. 74, Pt. 1, pp. 239–241; Vol. 76, Pt. 3, pp. 1571–1572. The manner in which the system operated in New Mexico is described in detail in the case of *Jaremillo* v. *Romero*, 1 N. M. 190 (1857). See also *Peonage Cases*, 123 Fed. 671, 673–675 (D. C. M. D. Ala.).

[4] Peonage was thus defined and described in *Clyatt* v. *United States*, 197 U. S. 207, 215:

"* * * What is peonage? It may be defined as a status or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness. As said by Judge Benedict, delivering the opinion in *Jaremillo* v. *Romero*, 1 N. Mex. 190, 194: 'One fact existed universally; all were indebted to their masters. This was the cord by which they seemed bound to their masters' service.' Upon this is based a condition of compulsory service. Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the

the broadest terms operate, through penal sanctions, upon individual action,[5] and this regardless of whether the offender is acting under color of local law or not[6] or irrespective of where in this country he may operate.[7] And it matters not whether the forbidden condition has been created by force or by a contract voluntary in its inception, or whether the indebtedness be real or feigned.[8] The sweep of the penal

mode of origin, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. But peonage, however created, is compulsory service, involuntary servitude. The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced. A clear distinction exists between peonage and the voluntary performance of labor or rendering of services in payment of a debt. In the latter case the debtor, though contracting to pay his indebtedness by labor or service, and subject like any other contractor to an action for damages for breach of that contract, can elect at any time to break it, and no law or force compels performance or a continuance of the service." See also *Bailey* v. *Alabama*, 219 U. S. 219, 242.

[5] Cf. *United States* v. *Clement*, 171 Fed. 974, 976 (D. C. S. C.); *Bernal* v. *United States*, 241 Fed. 339 (C. C. A. 5), certiorari denied, 245 U. S. 672; *Davis* v. *United States*, 12 F. (2d) 253 (C. C. A. 5), certiorari denied, 271 U. S. 688; see also *In re Lewis*, 114 Fed. 963, 966–967, (C. C. N. D. Fla.); *Huff* v. *United States*, 228 Fed. 892 (C. C. A. 5), certiorari denied, 241 U. S. 667.

[6] *Clyatt* v. *United States*, 197 U. S. 207, 218; *In Re Peonage Charge*, 138 Fed. 686, 688–690 (C. C. N. D. Fla.); *Peonage Cases*, 123 Fed. 671, 676–678, 680 (D. C. M. D. Ala.).

[7] *Clyatt* v. *United States*, *supra*, at 218; *Bailey* v. *Alabama*, 219 U. S. 219, 242; *In Re Peonage Charge*, *supra*, at 688 (C. C. N. D. Fla.).

[8] *Bailey* v. *Alabama*, *supra*, at 242; *Clyatt* v. *United States*, *supra*, at 218; *Bernal* v. *United States*, 241 Fed. 339 (C. C. A. 5), certiorari denied, 245 U. S. 672; *In Re Peonage Charge*, *supra*, at 688 (C. C. N. D. Fla.); *United States* v. *M'Clellan*, 127 Fed. 971, 975 (D. C. S. D. Ga.); *State* v. *Oliva*, 144 La. 51 (1918).

provisions is manifest. The Act provides for the punishment not only of anyone who holds, arrests, or returns a victim to a condition of peonage, but also of anyone who "causes" the forbidden acts, or "aids" in an arrest or a return, or in any way obstructs or attempts to obstruct or to interfere with or prevent the enforcement of the Act.

From its very face it is apparent, therefore, as was strikingly said in *Peonage Cases* (123 Fed. at 679), that the statute was designed to destroy peonage "root and branch; annihilating, not merely the 'system', but also the status—'the condition'— together with all the inevitable incidents to which it led or permitted."[*]

It is in this spirit that the courts have interpreted the statute. In addition to the broad judicial constructions heretofore recited (*supra*, p. 10), this Court has several times struck down, as contrary to the statute and the Thirteenth Amendment, state laws which, in practical effect, authorized forced labor in satisfaction of a debt (*Taylor* v. *Georgia*, 315 U. S. 25, 29; *United States* v. *Reynolds*, 235 U. S. 133, 150; *Bailey* v. *Alabama*, 219 U. S. 219, 245), even though such laws were framed under the guise of punishment for fraud (*Taylor* and *Bailey* cases). And the statute has been deemed sufficiently comprehensive to cover the "woods rider" who forcibly arrests an unwilling victim without color of law, as well as the magistrate

[*] As was said by this Court of the Prohibition Amendment, it was obviously the wish of those whose views were embodied in the statute "to stop the whole business"; "to suppress the entire traffic." *Grogan* v. *Walker & Sons*, 259 U. S. 80, 89; *Donaccia* v. *United States*, 281 U. S. 389, 397.

or the sheriff who, under ostensible legal sanction but in the corrupt exercise of his functions, renders similar assistance. *In Re Peonage Charge*, 138 Fed. 686, 689, 690 (C. C. N. D. Fla.); *Peonage Cases*, 123 Fed. 671, 684 (D. C. M. D. Ala.); see also *United States* v. *M'Clellan*, 127 Fed. 971 (D. C. S. D. Ga.).

The fundamental purpose of a statute must, of course, be the guide in its interpretation even though it be penal. The rule of strict construction of penal statutes does not require that such a statute "be strained and distorted in order to exclude conduct clearly intended to be within its scope * * *." *United States* v. *Raynor*, 302 U. S. 540, 552; *United States* v. *Giles*, 300 U. S. 41, 48; *Gooch* v. *United States*, 297 U. S. 124, 128; *Ash Sheep Co.* v. *United States*, 252 U. S. 159, 170; *United States* v. *Corbett*, 215 U. S. 233, 242–243.

Particularly should a statute such as this, which is designed to enforce the guarantees of personal liberty secured by the Thirteenth Amendment, be given a construction sufficiently broad to meet the evils which the statute was passed to eliminate. *Peonage Cases*, 123 Fed. 671, 676 (D. C. M. D. Ala.); *United States* v. *M'Clellan*, 127 Fed. 971, 975, 976 (D. C. S. D. Ga.); cf. *United States* v. *Stowell*, 133 U. S. 1, 12; *Taylor* v. *United States*, 3 How. 197, 210; *United States* v. *Morris*, 14 Pet. 464, 475.

Additionally, in interpreting the penal provisions of the instant statute, in the light of its purpose to exterminate peonage and its incidents, it should not be forgotten that when it was drafted the Federal conspiracy statute had not yet been enacted.[10] Congress

was therefore not in a position to rely upon such a supplemental aid to encompass those who, in connivance with others,[11] would thwart the statutory design to prevent peonage but who fail to accomplish their illegal purpose solely because of some adventitious circumstance. Hence it is only reasonable to suppose that Congress intended to embrace within the ambit of the statute all misconduct relative to peonage and its resulting evils.[12] The statute should accordingly be given a construction commensurate with that purpose.

Judged by these standards, and keeping ever in mind the manifest intention of Congress to destroy peonage and its concomitants, the question presented is whether Congress used language which is appropri-

[10] The two statutes were approved on the same day. See 14 Stat. 484, 546, and Historical Note to 18 U. S. C. A. 88.

[11] Since the creation and maintenance of a state of peonage, as the cases cited in this brief abundantly illustrate, generally depend upon the overpowering of the will of the intended victim through physical or legalistic terrorism, often more than one offender would be involved.

[12] The inclusion in the statute of provisions penalizing those who aid in the arrest or returning of any person to a condition of peonage, or who cause any person to be held, arrested, or returned to a condition of peonage, fortifies this conclusion. The only federal aider and abettor statute then on the books was one relating solely to murder, robbery, or other piracy upon the seas. Act of April 30, 1790, c. 9, sec. 10, 1 Stat. 112, 114. See Historical Note to 18 U. S. C. A. 550. It was not until the enactment of the Criminal Code on March 4, 1909, that a general aider and abettor statute was passed. Section 332 of that Code (18 U. S. C. 550) provides that "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

ate to condemn, as charged in the indictment, the act alone of arresting a person for the purpose of placing him in a condition of peonage, or whether it is necessary to allege and prove, in addition, that labor or service, in satisfaction of the claimed indebtedness, followed the arrest.

B. *The context of the penal provisions.*—It is beyond question that the statute penalizes three distinct primary offenses. As was said by this Court in the *Clyatt* case (197 U. S. at 218–219):

> Three distinct acts are here mentioned—holding, arresting, returning. The disjunctive "or" indicates the separation between them, and shows that either one may be the subject of indictment and punishment.

Two of these offenses, "holding" in a condition of peonage and "returning" to a condition of peonage, would seem to involve actual labor or service, but the other distinct offense denounced by the statute, "arrest," clearly does not embrace that element. The verb "arrest," in ordinary parlance, in which the term is unquestionably used in the statute,[13] means simply "to catch or lay hold upon; capture" (Webster's New International Dictionary, 2d ed.), and by its very nature the act of arrest is complete when the seizure is made. There can be no basis for the view, therefore, that the offense is not consummated in the

[13] Since the Act is aimed at conduct which is lawless as well as colorably lawful (see note 6, *supra*, p. 10), the "arrest," clearly, does not have to be one which is, purportedly, made by authority of law.

absence of the additional act of requiring the person to labor, either initially or because he is returned to a condition of peonage, unless there is in the statute some modifying language which requires that conclusion. Contextually there is, we submit, no such language. The statute reads "Whoever holds, arrests, returns * * * any person to a condition of peonage" shall be punished. The only portion of this language upon which there can be predicated even the semblance of an argument that actual labor or service must follow the arrest is the phrase "*to* a condition of peonage." [Italics supplied.] But that phrase obviously took the form it did because it was used with the verb "returns." It was proper to employ the preposition "to" with that verb. But since the phrase sufficiently expressed the dominant objective of the statute that peonage should be prevented, it was not necessary for Congress to be prepositionally precise as to the other two verbs, "holds" and "arrests." No one could fail to read the statute as meaning that it penalizes anyone who "holds * * * any person *in* a condition of peonage." [Italics supplied.] And it seems equally clear, since an "arrest," to be punishable under the statute, must be not for something which has happened but for the purpose of bringing about that which the legislation was designed to prevent, i. e., peonage, that any normal reading of the statute requires that it be read as though Congress, if it had been necessary to be more precise, had stated that it punishes anyone who "arrests * * * any person *for the purpose of placing him in a condi-*

tion of peonage."[14] whether initially or by way of returning him to that condition.[15] [Italics supplied.] (Cf. the quotations from this Court's opinion in the *Clyatt case*, appearing at pp. 17–18, 22–23, *infra*, in which the Court, analyzing the statute, uses the terms "hold in" and "arrest for.") It follows that, textually, there is no support for injection of the element of actual labor or service following the "arrest" as a component of that offense.

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[14] This objective, of course, gives the offense both its federal and constitutional flavor. As was said in *Peonage Cases*, 123 Fed. 671, 681 (D. C. M. D. Ala.):

"* * * Deprivation of liberty, or imprisonment, or force, to accomplish some other purpose, distinct from the enforcement of a debt, obligation, or contract of service, or claim of right to exact it, will not bring the offending party within the reason of the statute. Such acts done with other motive than to compel service may amount to assault and battery, or to false imprisonment, or to other violation of the criminal or civil laws of the state; but they do not constitute the holding or returning to 'a condition of peonage,' within the meaning of the statute."

Obviously this reasoning applies equally to the crime of arrest.

[15] The specific content of the criminal intent which must accompany a particular offense may, it is clear, be spelled out as well by intendment as by express terminology. *United States* v. *Balint*, 258 U. S. 250, 251–252; *Reynolds* v. *United States*, 98 U. S. 145, 167; *United States* v. *Morris*, 14 Pet. 464, 477; *United States* v. *Crimmins*, 123 F. (2d) 271, 272 (C. C. A. 2); *Seaboard Oil Co.* v. *Cunningham*, 51 F. (2d) 321, 324 (C. C. A. 5), certiorari denied, 284 U. S. 657; *Mackey* v. *United States*, 290 Fed. 18, 20–21 (C. C. A. 6); *Nosowitz* v. *United States*, 282 Fed. 575, 578 (C. C. A. 2); *Schulze* v. *United States*, 259 Fed. 189, 190 (C. C. A. 9); *United States* v. *Schultze*, 28 F. Supp. 234, 235 (D. C. W. D. Ky.).

While the indictment in this case charged that the defendant arrested the intended victim, Johnson, "to a condition of peonage," it goes on to explain that what was meant was that Johnson was arrested "with the purpose and intent of causing * * * Johnson, against his will, to perform labor and work in satisfaction of [the] claimed debt" (R. 2).

From the standpoint of affirmative action interdicted, it would seem evident, therefore, that the term "arrest," as used in the statute, is limited to the single act of seizure or capture which the term normally implies; that the offense is complete without the commission of another affirmative act, the compelling, either by the arrester or by someone else, of labor or service by the person arrested. To hold, as did the district court, that labor or service must be performed in satisfaction of the debt subsequent to the "arrest", is to do violence to the ordinary meaning of the term, contrary to the rule that the words of a statute are to be given their commonly accepted import. *United States* v. *Wurts*, 303 U. S. 414, 417; *Woolford Realty Co.* v. *Rose*, 286 U. S. 319, 327; *Caminetti* v. *United States*, 242 U. S. 470, 490.

Moreover, the penalization by the statute of three distinct offenses makes it apparent that, schematically, there were three distinct aspects of the peonage problem with which Congress was concerned, each presenting an evil which Congress desired to deal with separately and regardless of punishability in respect of either of the other two. This distinctivity was pointedly illustrated by this Court in the *Clyatt* case when, in explaining the impact of the penal provisions, it said (p. 219):

> A party may hold another in a state of peonage without ever having arrested him for that purpose. He may come by inheritance into the possession of an estate in which the peon is held, and he simply continues the condition which was existing before he came into posses-

> sion. He may also arrest an individual for the purpose of placing him in a condition of peonage, and this whether he be the one to whom the involuntary service is to be rendered or simply employed for the purpose of making the arrest. Or he may, after one has fled from a state of peonage, return him to it, and this whether he himself claims the service or is acting simply as an agent of another to enforce the return.

But the district court's construction, by holding that actual peonage must result from the arrest, blurs this concept of distinctiveness of offenses by making the arrest provision serve merely as an "aider and abettor" provision to those dealing with holding or returning.[18] This disturbs the statutory scheme of three distinct and independent offenses—holding, arresting, and returning. There is nothing in the statute which indicates a congressional design to make guilt for the crime of arrest depend upon the commission by the arrester or someone else of one of the other two principal crimes which the statute denounces, holding in a condition of peonage, or returning to a condition of peonage. Indeed, except in the perhaps occasional case where the one who arrests is himself the prospective master or his employee, an "official" arrester or those who aid him—the sheriff, the police officer, the magistrate—once the allotted

[18] It has been held, as indicated, that the term "arrest" refers both to an initial seizure and a rearrest after escape from peonage. *Davis v. United States*, 12 F. (2d) 2[illegible]6 (C. C. A. 5), certiorari denied, 271 U. S. 688.

task is performed, normally would have but little interest in whether peonage actually resulted.

Interpretatively, the penal provisions may not, certainly, be divorced from the statute of which they were part and parcel just because those provisions have been isolated in the process of statutory compilation.[17] Considering the statute as a whole and in the light of its manifest design of dealing comprehensively with peonage and all of its incidental evils, we think it is evident that Congress, when it made provision for the crime of arrest, was concerned alone with the fact of seizure, irrespective of what transpired thereafter, provided, of course, that the seizure was for the purpose and with the intent of thwarting the dominant aim of the statute—the eradication of peonage.

C. *The legislative history.*—Our construction of the term "arrest" as having reference to the act of seizure alone, is strengthened when attention is focused upon certain practices which gave impetus to the legislation.

On January 3, 1867, Charles Sumner, of Massachusetts, called the attention of the Senate to an order issued in August 1865, by the general commanding the Department of New Mexico to the captain in command at Fort Seldon, New Mexico, directing the cap-

[17] Cf. Section 339 of the Criminal Code (35 Stat. 1153; 18 U. S. C. 573), reading:

"The arrangement and classification of the several sections of this title have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the chapters under which any particular section is placed."

tain to arrest a fugitive peon who had apparently taken refuge at the Fort and surrender him to his master. The captain protested against this order, claiming that the surrender would violate the civil law and also be contrary to the proclamation of the President abolishing involuntary servitude. The reply of the commanding general argued that peonage was voluntary and not involuntary servitude, and hence was not prohibited by the Constitution or the President's proclamation; and that under the laws of New Mexico "not only can the master arrest and take his servant peon, but the civil authorities are commanded to arrest and deliver the peon to his master when deserting him."[18] The captain was accordingly directed "so far to aid in the rendition of peons when claimed by their masters, or there is a reasonable cause to believe they have deserted them, as not to allow them to remain on the military reservation." This did not accord with the view of Senator Sumner that the system of peonage prevailing in New Mexico was involuntary servitude and hence contrary to the President's proclamation and the Thirteenth Amendment.

Senator Sumner also made reference to a report by an Indian Agent to the Commissioner of Indian Affairs which disclosed that it was a practice in the Territory of New Mexico for the whites, under the encouragement of territorial law, to organize expeditions or campaigns against the Indians, as a result of which the Indians who were captured were held practically as slaves, or were sold at an average of seventy-

[18] Citing Laws of New Mexico (1858–1859), c. 12, Sec. 1. See also *Jaramillo* v. *Romero*, 1 N. M. 190, 194, 199 (1857).

five to four hundred dollars and thereafter held in a condition of peonage.[19]

It was because of these practices that Senator Sumner secured the passage of a resolution directing the Committee on Military Affairs "to consider if any further legislation is needed to prevent the enslavement of Indians in New Mexico or any system of peonage there, and especially to prohibit the employment of the Army of the United States in the surrender of persons claimed as peons." Congressional Globe, 39th Cong., 2d sess., Vol. 74, Pt. 1, pp. 239–241. The result of this resolution was that the Senate Military Affairs Committee prepared and presented the bill which became the Peonage Abolition Act. During the debate on this bill, the aid rendered by military and civil officers of the United States in carrying out the system of peonage obtaining in the Territory, as well as the practice of raiding the Indians and holding them as peons, was again adverted to, it being pointed that several thousand Indians were being held as peons in New Mexico. Congressional Globe, 39th Cong., 2d sess., Vol. 76, Pt. 3, p. 1571. See also Appendix to Senate Report No. 156, 39th Cong., 2d sess., pp. 325, 326.

It is therefore manifest that Congress was deeply stirred by twin evils to which the system of peonage in New Mexico had given rise—the apprehension of fugitive peons and the initial seizure of those who had

[19] It was pointed out in the report that nearly every federal officer in New Mexico held peons in service, and that the Superintendent of Indian Affairs in New Mexico had half a dozen peons.

not theretofore been in bondage—evils perpetrated by those, ordinarily, who were not to benefit from the peon's labor. Hence, it is not difficult to see why Congress wanted to punish as a distinct class those whose only relationship to peonage was the seizure of intended victims.

D. *Judicial interpretation of the term "arrest", as used in the statute.* This is the first case which has presented directly the question under consideration, but the Government's interpretation is, we believe, sustained by dictum in the opinion of this Court in the *Clyatt* case, 197 U. S. 207. In that case this Court, after sustaining the constitutionality of the peonage abolition statute, held that a conviction could not be had for returning certain persons to a condition of peonage in the absence of proof that the persons so returned had previously actually been in such a condition. In analyzing, in this connection, the penal provisions of the statute, this Court said, with reference to the offense of arrest (p. 219): "He [the offender] may also arrest an individual *for the purpose of placing him in a condition of peonage,*[20] and this whether he be the one to whom the involuntary service is to be rendered or simply employed for the purpose of making the arrest." [Italics supplied.] Several paragraphs later the Court also said (p. 219): "We are not at liberty to transform this indictment into one charging that the defendant held them in a condition

[20] This same language was employed in describing the crime of arrest in *In Re Peonage Charge*, 138 Fed. 686, 688 (C. C. N. D. Fla.), rendered several months after the *Clyatt* decision. See, further, the succeeding discussion in this charge at pp. 688-689.

or state of peonage, or that he arrested them *with a view of placing them in such condition or state.*" [Italics supplied.] These expressions, it would seem to us, indicate that this Court felt that the crime is complete when, with the necessary intent, the arrest is made.[21]

Such other judicial interpretations as there have been of the term "arrest," as used in the statute, have been broad ones. Thus, it has been held, as indicated, that the term refers to a re-arrest following an escape from peonage as well as an original seizure (*Davis* v. *United States*, 12 F. (2d) 253, 256 (C. C. A. 5), certiorari denied, 271 U. S. 688). Also, the crime is committed not only where the seizure is under the guise of judicial process, but where it is a forcible apprehension without color of law. *In re Peonage Charge*, 138 Fed. 686, 690 (C. C. N. D. Fla.).

E. The restrictive effect of the district court's interpretation.—The district court's construction permits

[21] In a dissenting opinion in *Taylor* v. *United States*, 244 Fed. 321, 332 (C. C. A. 4), this was said to be a permissible construction of this Court's language in the *Clyatt* case. The dissenting judge, however, differed from this Court's dictum, saying (p. 333): "It seems clear that the peonage statutes do not make criminal an arrest with the purpose of placing a man in a condition of peonage without the actual accomplishment of the purpose. The crime denounced is in fact holding one in a condition of peonage, or returning one to a condition of peonage, or by means of arrest placing one in a condition of peonage, who may or may not have been a peon before." The dissenting judge, however, did not support his view with any analysis of the statute. The point is not considered at all in the majority opinion, since the other two judges were of the view that what was sought to be accomplished by the defendants in that case was not peonage (see pp. 325, 327–330).

conviction for the crime of arrest only in those cases in which a conviction may, in addition, be had for holding a victim in a condition of peonage, or for returning him to that condition. It hence excludes every case in which through some extraneous circumstance peonage does not actually follow the arrest, even though that result is fully intended. No one—neither the arrester or his assistant, nor even the prospective master himself who "causes" the arrest—can be punished under the statute, even though the victim is seized at the point of a gun or is otherwise forcibly apprehended, if, prior to actual service, the victim should be so fortunate as to escape, or be rescued, or if he should die or become too ill to be useful.[22] The same result would usually follow if the one to whom the service is to be rendered should die meanwhile or should for any reason fail to go ahead with his plan. And the district court's construction absolves from punishment those whose only function, whether peonage does or does not result, is, normally, participation in the process of seizure, the corrupt sheriff or magistrate. Certainly such a construction is not in harmony with the legislative purpose to destroy, root and branch, peonage and all its accompanying evils. The practical efficacy of a statute designed as is the Peonage Abolition Act, to fortify the broad guarantees of personal freedom embodied in the Thirteenth Amendment, should not be so impaired in the absence of anything therein which

[22] And, of course, lawlessness like this often begets, in return, retaliation, leading sometimes to bloodshed.

requires such a construction.[1] The congressional objectives can, we submit, be attained only if the statute is interpreted as authorizing punishment for the act alone of arrest, provided, of course, that the arrest is accompanied with the intent that the victim be placed in or returned to a condition of peonage. At that moment the offense is consummated, regardless of whether actual labor or service is later performed.

CONCLUSION

For the reasons stated, we respectfully submit that the district court's construction of the term "arrest" as used in Section 269 of the Criminal Code, is erroneous; that the indictment is not vulnerable because it contains no allegation of actual labor or service following the arrest; and that the judgment sustaining the demurrer should be reversed and the cause remanded for further proceedings.

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[1] We are advised by the Civil Rights Section of the Criminal Division of this Department that about 10 percent of the complaints of peonage forwarded to the Department during the past year have involved, investigation disclosed, situations where there had been an arrest upon a claim of indebtedness for the purpose of enforcing labor but performance of labor had not actually resulted.